



Paper No. 5

David C. Ripma, Patent Counsel
Sharp Laboratories of America, Inc.
5750 NW Pacific Rim Boulevard
Camas, WA 98607

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In re.Application :
Kethireddy :
Application No. 10/066,088 :
Filed: January 30, 2002 :
Attorney Docket No.: SLA 1164 :
For: USER INTERFACE AND METHOD FOR :
PROVIDING SEARCH QUERY SYNTAX HELP :

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(a), filed December 17, 2002 to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.137(a)." This is not a final agency decision.

This application became abandoned April 29, 2002 for failure to timely reply to the Notice to File Corrected Application Papers ("Notice") mailed February 28, 2002. The Notice set a two (2) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136(a) were timely requested. This decision precedes Notice of Abandonment.

A grantable petition under 37 C.F.R. § 1.137(a) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(a) was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition lacks item (3) set forth above. Petitioner has failed to present a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable

petition pursuant to 37 C.F.R. § 1.137(a) was unavoidable.

The Office may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable." See, 37 C.F.R. 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); In re Mattullath, 38 App. D.C. 497, 514-15 (1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533 at 538, 213 U.S.P.Q. (BNA) 977 at 982 (D.C. Cir. 1982). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 U.S.P.Q. 2d 1130 (N.D. Ind. 1987).

Petitioner alleges non-receipt of the Notice.

In the absence of any irregularity in the mailing of the Notice, there is a strong presumption that the Notice was properly mailed to the correspondence address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the inventor stating that the Office communication was not received by the inventor and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in the inventor's statement. See, MPEP 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

The instant petition is not accompanied by corroborative evidence to support the allegation that the Notice was not received. Any renewed petition must be accompanied by evidence to sufficiently establish the Notice was not received at the correspondence address of record at the time of mailing of the Notices.

ALTERNATE VENUE

Petitioner may wish to consider filing a petition stating that the entire delay was unintentional. Petitioner's attention is directed to 37 C.F.R. § 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 C.F.R. § 1.137(b) must be accompanied by the required petition fee, statement of unintentional delay, reply, and, if applicable, a terminal disclaimer (and fee).

The filing of a petition under 37 C.F.R. § 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 C.F.R. § 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 C.F.R. § 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: (703) 308-6916

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0210.


Alesia M. Brown
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy